

117TH CONGRESS  
2D SESSION

# S. 3955

To amend the Internal Revenue Code of 1986 to provide for starter 401(k)s for employers with no retirement plans, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

MARCH 30, 2022

Mr. BARRASSO (for himself and Mr. CARPER) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to provide for starter 401(k)s for employers with no retirement plans, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Starter-K Act of  
5       2022”.

6       **SEC. 2. STARTER 401(k) PLANS FOR EMPLOYERS WITH NO**  
7                   **RETIREMENT PLAN.**

8       (a) IN GENERAL.—Section 401(k) of the Internal  
9       Revenue Code of 1986 is amended by adding at the end  
10      the following new paragraph:

1               “(16) STARTER 401(k) DEFERRAL-ONLY PLANS  
2               FOR EMPLOYERS WITH NO RETIREMENT PLAN.—

3               “(A) IN GENERAL.—A starter 401(k) de-  
4               ferral-only arrangement maintained by an eligi-  
5               ble employer shall be treated as meeting the re-  
6               quirements of paragraph (3)(A)(ii).

7               “(B) STARTER 401(k) DEFERRAL-ONLY  
8               ARRANGEMENT.—For purposes of this para-  
9               graph, the term ‘starter 401(k) deferral-only  
10              arrangement’ means any cash or deferred ar-  
11              rangement which meets—

- 12              “(i) the automatic deferral require-  
13              ments of subparagraph (C),  
14              “(ii) the contribution limitations of  
15              subparagraph (D), and  
16              “(iii) the requirements of subpara-  
17              graph (E) of paragraph (13).

18              “(C) AUTOMATIC DEFERRAL.—

19              “(i) IN GENERAL.—The requirements  
20              of this subparagraph are met if, under the  
21              arrangement, each employee eligible to  
22              participate in the arrangement is treated  
23              as having elected to have the employer  
24              make elective contributions in an amount

1                   equal to a qualified percentage of com-  
2                   pensation.

3                   “(ii) ELECTION OUT.—The election  
4                   treated as having been made under clause  
5                   (i) shall cease to apply with respect to any  
6                   employee if such employee makes an af-  
7                   firmative election—

8                   “(I) to not have such contribu-  
9                   tions made, or

10                  “(II) to make elective contribu-  
11                  tions at a level specified in such af-  
12                  firmative election.

13                  “(iii) QUALIFIED PERCENTAGE.—For  
14                  purposes of this subparagraph, the term  
15                  ‘qualified percentage’ means, with respect  
16                  to any employee, any percentage deter-  
17                  mined under the arrangement if such per-  
18                  centage is applied uniformly and is not less  
19                  than 3 or more than 15 percent.

20                  “(D) CONTRIBUTION LIMITATIONS.—

21                  “(i) IN GENERAL.—The requirements  
22                  of this subparagraph are met if, under the  
23                  arrangement—

24                  “(I) the only contributions which  
25                  may be made are elective contribu-

1                      tions of employees described in sub-  
2                      paragraph (C), and

3                      “(II) the aggregate amount of  
4                      such elective contributions which may  
5                      be made with respect to any employee  
6                      for any calendar year shall not exceed  
7                      \$6,000.

8                      “(ii) COST-OF-LIVING ADJUSTMENT.—  
9                      In the case of any calendar year beginning  
10                      after December 31, 2023, the \$6,000  
11                      amount under clause (i) shall be adjusted  
12                      in the same manner as under section  
13                      402(g)(4), except that ‘2022’ shall be sub-  
14                      stituted for ‘2005’.

15                      “(iii) CROSS REFERENCE.—For catch-  
16                      up contributions for individuals age 50 or  
17                      over, see section 414(v)(2)(B)(ii).

18                      “(E) ELIGIBLE EMPLOYER.—For purposes  
19                      of this paragraph—

20                      “(i) IN GENERAL.—The term ‘eligible  
21                      employer’ means any employer which, dur-  
22                      ing the first plan year of the cash or de-  
23                      ferred arrangement described in subpara-  
24                      graph (B), does not maintain any other  
25                      qualified plan. An employer treated as an

1                   eligible employer under the preceding sen-  
2                   tence shall be treated as an eligible em-  
3                   ployer with respect to the arrangement for  
4                   any subsequent plan year without regard  
5                   to whether it maintains another qualified  
6                   plan.

7                   “(ii) QUALIFIED PLAN.—The term  
8                   ‘qualified plan’ means a plan, contract,  
9                   pension, account, or trust described in sub-  
10                  paragraph (A) or (B) of paragraph (5) of  
11                  section 219(g) (determined without regard  
12                  to the last sentence of such paragraph  
13                  (5)).”.

14                  (b) CERTAIN ANNUITY CONTRACTS.—Subsection (b)  
15                  of section 403 of the Internal Revenue Code of 1986 is  
16                  amended by adding at the end the following new para-  
17                  graph:

18                  “(15) SAFE HARBOR DEFERRAL-ONLY PLANS  
19                  FOR EMPLOYERS WITH NO RETIREMENT PLAN.—

20                  “(A) IN GENERAL.—A safe harbor defer-  
21                  ral-only plan maintained by an eligible employer  
22                  shall be treated as meeting the requirements of  
23                  paragraph (12).

24                  “(B) SAFE HARBOR DEFERRAL-ONLY  
25                  PLAN.—For purposes of this paragraph, the

1           term ‘safe harbor deferral-only plan’ means any  
2           plan which meets—

3                 “(i) the automatic deferral require-  
4                 ments of subparagraph (C),

5                 “(ii) the contribution limitations of  
6                 subparagraph (D), and

7                 “(iii) the requirements of subpara-  
8                 graph (E) of section 401(k)(13).

9                 “(C) AUTOMATIC DEFERRAL.—

10                 “(i) IN GENERAL.—The requirements  
11                 of this subparagraph are met if, under the  
12                 plan, each eligible employee is treated as  
13                 having elected to have the employer make  
14                 elective contributions in an amount equal  
15                 to a qualified percentage of compensation.

16                 “(ii) ELECTION OUT.—The election  
17                 treated as having been made under clause  
18                 (i) shall cease to apply with respect to any  
19                 eligible employee if such eligible employee  
20                 makes an affirmative election—

21                 “(I) to not have such contribu-  
22                 tions made, or

23                 “(II) to make elective contribu-  
24                 tions at a level specified in such af-  
25                 firmative election.

1                     “(iii) QUALIFIED PERCENTAGE.—For  
2                     purposes of this subparagraph, the term  
3                     ‘qualified percentage’ means, with respect  
4                     to any employee, any percentage deter-  
5                     mined under the plan if such percentage is  
6                     applied uniformly and is not less than 3 or  
7                     more than 15 percent.

8                     “(D) CONTRIBUTION LIMITATIONS.—

9                     “(i) IN GENERAL.—The requirements  
10                    of this subparagraph are met if, under the  
11                    plan—

12                    “(I) the only contributions which  
13                    may be made are elective contribu-  
14                    tions of eligible employees, and

15                    “(II) the aggregate amount of  
16                    such elective contributions which may  
17                    be made with respect to any employee  
18                    for any calendar year shall not exceed  
19                    \$6,000.

20                    “(ii) COST-OF-LIVING ADJUSTMENT.—  
21                    In the case of any calendar year beginning  
22                    after December 31, 2023, the \$6,000  
23                    amount under clause (i) shall be adjusted  
24                    in the same manner as under section

1                   402(g)(4), except that ‘2022’ shall be sub-  
2                   stituted for ‘2005’.

3                   “(iii) CROSS REFERENCE.—For catch-  
4                   up contributions for individuals age 50 or  
5                   over, see section 414(v)(2)(B)(ii).

6                   “(E) ELIGIBLE EMPLOYER.—For purposes  
7                   of this paragraph—

8                   “(i) IN GENERAL.—The term ‘eligible  
9                   employer’ means any employer which, dur-  
10                  ing the first plan year of the plan de-  
11                  scribed in subparagraph (B), does not  
12                  maintain any other qualified plan. An em-  
13                  ployer treated as an eligible employer  
14                  under the preceding sentence shall be  
15                  treated as an eligible employer with respect  
16                  to the plan for any subsequent plan year  
17                  without regard to whether it maintains an-  
18                  other qualified plan.

19                  “(ii) QUALIFIED PLAN.—The term  
20                  ‘qualified plan’ means a plan, contract,  
21                  pension, account, or trust described in sub-  
22                  paragraph (A) or (B) of paragraph (5) of  
23                  section 219(g) (determined without regard  
24                  to the last sentence of such paragraph  
25                  (5)).

1                 “(F) ELIGIBLE EMPLOYEE.—For purposes  
2                 of this paragraph, the term ‘eligible employee’  
3                 means any employee of the employer other than  
4                 an employee who is permitted to be excluded  
5                 under paragraph (12)(A).”.

6                 (c) CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS

7     AGE 50 AND OVER.—

8                 (1) Section 414(v)(2)(B) of the Internal Rev-  
9                 enue Code of 1986 is amended by inserting “,  
10                 401(k)(16), 403(b)(15),” after “401(k)(11)” each  
11                 place it appears.

12                 (2) Section 414(v)(3)(B) of such Code is  
13                 amended—

14                 (A) by inserting “, 401(k)(16)” after  
15                 “401(k)(11)”, and

16                 (B) by inserting “, 403(b)(15)” after  
17                 “403(b)(12)”).

18                 (d) SIMPLIFIED REPORTING.—Section 104(a)(2)(A)  
19                 of the Employee Retirement Income Security Act of 1974  
20                 (29 U.S.C. 1024(a)(2)) is amended by striking “or” at  
21                 the end of clause (i), by redesignating clause (ii) as clause  
22                 (iii), and by inserting after clause (i) the following new  
23                 clause:

24                 “(ii) is a starter 401(k) deferral-only  
25                 arrangement described in section

1                   401(k)(16)(B) of the Internal Revenue  
2                   Code of 1986 or a safe harbor deferral-  
3                   only plan described in section 403(b)(15)  
4                   of such Code; or”.

5         (e) STARTER AND SAFE HARBOR PLANS NOT  
6 TREATED AS TOP-HEAVY PLANS.—Subparagraph (H) of  
7 section 416(g)(4) of the Internal Revenue Code of 1986  
8 is amended—

9                   (1) by striking “ARRANGEMENTS” in the head-  
10                  ing and inserting “ARRANGEMENTS OR PLANS”,

11                  (2) by striking “, and” at the end of clause (i)  
12                  and inserting “and matching contributions with re-  
13                  spect to which the requirements of section  
14                  401(m)(11) or 401(m)(12) are met, or”, and

15                  (3) by striking clause (ii) and inserting after  
16                  clause (i) the following new clause:

17                   “(ii) a starter 401(k) deferral-only ar-  
18                  rangement described in section  
19                  401(k)(16)(B) or a safe harbor deferral-  
20                  only plan described in section  
21                  403(b)(15).”.

22         (f) PLANS NOT SUBJECT TO EMPLOYEE RETIRE-  
23 MENT INCOME SECURITY ACT OF 1974.—Applicable to  
24 plan years beginning after December 31, 2022, the Sec-  
25 retary of Labor shall update Field Assistance Bulletin No.

1 2010–01 to specify that the hiring of a new plan adminis-  
2 trator or third-party administrator by a plan which is not  
3 previously subject to title I of the Employee Retirement  
4 Income Security Act of 1974 shall not cause such plan  
5 to be subject to such title.

6 (g) EFFECTIVE DATE.—The amendments made by  
7 this section shall apply to plan years beginning after De-  
8 cember 31, 2022.

